

L. A. IDLER

IBLA 76-160

Decided February 11, 1976

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-50976.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

While the Secretary of the Interior has the authority to reject oil and gas lease offers in the public interest, such rejection must be rationally related to that public interest. Where an offer to lease lands in an "elk winter pasture" is rejected a few months after issuing a similar lease to another person for lands within the same area, which lands are apparently indistinguishable from the lands in the rejected lease offer, such offer will be remanded for reconsideration.

APPEARANCES: L. A. Idler, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

L. A. Idler filed a noncompetitive oil and gas lease offer on May 13, 1975 with the Wyoming State Office, Bureau of Land Management (BLM). He offered to lease 680 acres of land in T 42 N., R. 106 W., 6th P.M., Fremont County, Wyoming. However, the Area Manager, Lander, Wyoming, Resource Area, recommended that the lease not issue for three reasons. First, the entire area is withdrawn by PLO 888 for the Wyoming Game and Fish Elk Winter Pasture. ^{1/} Second, the terrain is steep and there is not adequate access. Third, he states that the soil is structurally

^{1/} PLO 888 provides that the subject land is "*** withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws ***" (Emphasis added.)

weak and highly erosive, and, therefore, is poorly suited for any kind of construction. Because of those recommendations, the Wyoming State Office, BLM, by decision of August 1, 1975, rejected Idler's lease offer. From that rejection, Idler prosecutes this appeal.

Appellant states that another lease, W-14679, was issued in 1975 for other contiguous land within the withdrawn area. Moreover, he asserts, there is no practical difference between that land and this land as to soil, topography or access. Appellant does state that access to the subject land may be better than that on lease W-14679, as dirt roads cross all tracts applied for except 40 acres. Essentially, appellant argues, it is inequitable to treat him differently from others in the same or similar circumstances, especially in this case, since appellant is willing to accept the same restrictive stipulations as were imposed on the other lessees in the same area. 2/

[1] We agree. In T. R. Young, Jr., 20 IBLA 333 (1975), we stated:

Under the provisions of the Mineral Leasing Act of 1920, and amendments thereto, 30 U.S.C. § 181 et seq. (1970), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased by the Secretary." (Emphasis added) 30 U.S.C. § 226(a) (1970). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-5 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest.

20 IBLA at 334-35.

Based on those principles we would ordinarily be inclined to affirm the decision of Wyoming State Office, as, on its face, the decision accords well with those principles. However, appellant has alleged

2/ The special stipulations allegedly restrict exploratory activity to the period between May 1 and November 30 each year, to protect elk winter pasturing.

that others, similarly situated, have recently been granted leases. The lands applied for are interspersed among the lands already leased. As it is fundamental to the law that all persons in the same situation should receive equal treatment, and it does not appear that error was committed in issuing lease W-14679, we vacate the decision of the Wyoming State Office for a determination by that office as to whether there is any difference between the land in appellant's lease offer and the other lands leased in 1975, or whether there are other compelling reasons for the rejection. We cannot make that determination as no evidence on environmental distinctions was transmitted with the case file.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded to the Wyoming State Office for action consistent with the views expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

